

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2164 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MR. JOHN MANATH

Versus

STATE OF GUJARAT

Appearance:

MR AD SHAH for Petitioner

MR MA BUKHARI, ADDL. PUBLIC PROSECUTOR for Respondent No. 1

MR BHARAT T RAO for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 04/03/97

ORAL JUDGEMENT

1. By way of this Criminal Misc. Application u/s 482 of the Code of Criminal Procedure, the petitioner seeks direction to quash the criminal case No.2718/88 pending in the Court of the Chief Judicial Magistrate, Baroda.

2. One Mr Kirti Jain, Managing Director, Esskay

Remedies Pvt Ltd, at Baroda filed a complaint in the Court of the Chief Judicial Magistrate, Baroda stating that the complainant company is manufacturing various sorts of medicines. An agreement was entered with M/s Burleigh and Johnsons Pvt Ltd, of which accused No.1 Mr K.V.S. Raju is an Executive Director with respect to the distribution of medicines. The accused No.2 - Mr John Manath is the Managing Director of the company at Bombay. The complainant visited Madras in August 1987. He was informed that the activities of pharmaceutical marketing of this Burleigh and Johnsons Pvt Ltd would be going to be handled henceforth by their Associate Company M/s B & J Marketing Company, Madras. The accused No.1 Mr Raju said that now further communications and bills may be sent to the new concern. The accused No.1 Mr Raju wrote a letter dated 5/12/87 on the letter pad of M/s Burleigh & Johnsons to the complainant that all the pharmaceutical marketing of this company M/s Burleigh & Johnson Pvt Ltd would henceforth be handled by M/s B & J Marketing Company, Madras. The said letter is signed by the accused No.1 - Mr Raju. The complainant understood that it was a genuine case of transferring the marketing activities of one company to another associate Company and send bills to B & J Marketing Company. It is stated that, inspite of reminder, the said Company remained silent with respect to the 'C' Form of M/s B & J Marketing Company. Subsequently, it was said that the 'C' Form has been sent to the complainant. The complainant started dealing with M/s B & J Marketing Company with new terms and conditions and the first order was placed on 5/12/1987. The accused No.1 - Mr Raju visited Baroda again on 9/2/1988 and paid cash for overdue bills and thereafter, lot of goods sent and volume of business was also very good. However, M/s B & J Marketing Company did not give the 'C' Forms. However, subsequently, payment problem arose about the outstanding amount to the tune of Rs.50,000/-. The complainant again visited Madras on 17/4/1988. The accused No.1 informed the complainant that the accused no.2 with the help of some miscreants has removed the accused no.1 from the office and took over the premises and the stock. He also informed the complainant that he is the proprietor of M/s B & J Marketing Company. Thereupon, the complainant visited Mr John (accused No.2), who informed that the accused No.1 cheated him. The complainant suspects collusion between the accused no.1 and no.2. However, the assurance was given to continue with the business. The accused No.2 also assured the complainant the minimum sale of Rs 2.00 lakh per month and about the promptness of the payment and also assured the complainant to issue cheque on presentation of the L.R. of the goods sent to

Madras and at Bombay. The complainant visited Bombay office with certain L.Rs. and bills and met accused no.2 for the payment of the bills. The accused No.2 issued to the complainant (1) cheque dated 25/5/88 for Rs. 50,000/-, (2) cheque dated 25/5/88 for Rs 50,000/- from the account of M/s Burleign & Johnson Pvt Ltd, (3) two cheques towards the pending account settlement, (4) cheque dated 27/5/88 for Rs. 55,268.46 and (5) cheque dated 10/6/88 for Rs.50000/-. The accused no.2 also promised the complainant that he will be making the payment of the balance amounts of Rs.1,15,525.58 within a short time. Subsequently, by sending letter, the complainant was advised not to present the cheques in the bank. The said advice was from M/s B & J Pvt Ltd. The further say of the complainant is that as the goods were already despatched, both the cheques were deposited on 13/6/88 and 16/6/88, but as there was 'stop-payment', there was no encashment of the cheques. It is further say of the complainant that, apprehending that delivery will be taken forcibly, civil suit was filed to obtain injunction against the transporter Asaam Bengal Roadways not to deliver the goods to the accused or anybody. It is alleged that both the accused with a common intention to cheat the complainant and make profit without making payments of sales tax and without taking requisite Drug Licence, they forged the drug license and other licences numbers in their order form. The say of the complainant is that none of the accused are having such drug license or central sales tax license number and they obtained the distributorship fraudulently. Thus, according to the complainant, both the accused are guilty of offence u/s 420, 469, 114 IPC.

3. I have heard Mr A.D.Shah, learned counsel for the petitioner. It is submitted that the complaint is false and fabricated. Four cheques were handed over by the accused No.2 to the complainant for an amount of Rs.2,06,286.56. The two cheques dated 25/5/88 totalling to Rs. 1,00,000/- was to be treated as an advance for the order placed by the company of the accused No.2. The remaining cheques were to be encashed after delivery of the goods at Madras by the transporter. The complainant had assured that the goods will reach Madras within a weeks time and accused no.2 finding that the goods were already booked through Assam Bengal Roadways Ltd on 24/5/88, anticipated the receipt of the same at Madras within 7 to 10 days. However, these goods were not received at Madras till 16/6/88. In view of this, the instructions were given to the bankers at Bombay to make 'stop-payment' of the remaining two cheques worth Rs. 1,06,268.46. On this facts, it is

contended that even if the complainant's case is accepted on its face value, no offence u/s 406 or 420 IPC can be constituted, as the necessary ingredients of the offence are wanting. It is also submitted that the entire dispute is of civil nature and by filing the complaint, the complainant has abused the process of law.

4. Mr B.T.Rao, learned counsel appearing for the complainant, submitted that he wants to seek instructions from the complainant company which on account of amalgamation, has shifted to Bombay. It is an old matter. The complaint is pending in the Court of Chief Judicial Magistrate since 1988. It appears that the complainant is no more interested. It is matter of experience that in such disputes of civil nature, parties approach to the Court with a view to settle dispute by abusing the process of criminal law. They are not interested after initial harassment. The prayer for adjournment is accordingly declined.

5. I have perused the complaint carefully, the controversy is as to whether the four cheques were against the previous transaction of B.P.J. Marketing Company or against the fresh order from Berleigh & Johnson Pvt Ltd. Petitioner filed a suit in the High Court of Madras that two cheques dated 25/5/88 were towards advance and rest two post dated cheques were towards balance amount to be encashed on receipt of the goods at Madras. Complainant had also obtained injunction from Civil Court against the delivery of goods. In my view, dispute is essentially of civil nature and continuance of it will amount to abuse of process of law.

6. In view of the aforesaid, this Criminal Misc. Application is allowed. The criminal proceedings being Criminal Case No. 2718 of 1988 pending in the Court of the Chief Judicial Magistrate, Baroda are quashed and set aside. Rule made absolute to the aforesaid extent.

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